

**Letter of Findings: 65-20190933P
Indiana Oversize/Overweight Proposed Assessment
For the Year 2018**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department sent Motor Carrier a proposed assessment for oversize/overweight ("OS/OW") civil penalties for operating while overweight on allowable axle weight. At hearing, Motor Carrier established that the proposed assessment failed to meet statutory requirements. Therefore, Motor Carrier's protest is sustained.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-4-1; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289 (Ind. Tax Ct. 2007).

Motor Carrier protests the assessment of an OS/OW civil penalty.

STATEMENT OF FACTS

Motor Carrier is an Indiana business engaged in transporting bulk commodities. On April 6, 2018, Motor Carrier's commercial motor vehicle was cited by the Indiana State Police ("ISP") for overweight violations. As a result, the Indiana Department of Revenue Motor Carrier Services Division issued Motor Carrier a proposed assessment for an OS/OW civil penalty. Motor Carrier disagreed with the assessment of penalty and submitted a protest to that effect. This Letter of Findings results. Further facts will be supplied as necessary.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Motor Carrier protests the imposition of a penalty imposed on overweight vehicles. The Department based its proposed assessment on a report provided by the ISP. Motor Carrier argues that it was hauling a load that, by its nature, is subject to shifting. This, in turn, resulted in the movement of excess weight on multiple axles.

As a threshold issue, it is Motor Carrier's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, "an owner of a vehicle . . . may not cause or knowingly permit to be operated or moved upon a highway in Indiana a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit

under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required but fail to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a Motor Carrier "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty" According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 characterizes fees and penalties stemming from IC Art. 9-20 violations as a "listed tax." According to IC § 9-20-18-14.5(3), these listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, the Department issued Motor Carrier a Permit Violation Civil Penalty for being overweight on allowable axle weight in violation of IC § 9-20-4-1. Department records, however, demonstrate that the Department did not issue a permit to Motor Carrier.

Motor Carrier contends that it should not have received a Permit Violation Civil Penalty because the fine for the original infraction was paid in a timely manner, this was Motor Carrier's first weight violation received, the driver did not have control over a shifting load while hauling coal, and the penalty is excessive in light of these points.

As referenced above, OS/OW civil penalties imposed under IC § 9-20-18-14.5 are in addition to other civil penalties that may be imposed under IC Titles 8 and 9. Therefore, a citation issued by the ISP would not prevent the Department from being able to impose the Permit Violation Civil Penalty in question. As to the amount of the proposed assessment, the Department issues civil penalty amounts as prescribed by IC § 9-20-18-14.5. IC § 9-20-18-14.5(b) authorizes the Department to impose not more than a \$500.00 civil penalty for a first violation and not more than \$1,000.00 for each subsequent violation. In this case, the Department has imposed \$500.00 for a first violation and \$1,000.00 for a subsequent violation.

However, the main issue is that the Department did not offer a permit for the transportation of coal until November 2, 2018. This was well after the April 6, 2018 traffic stop. It follows that Motor Carrier neither had a permit to violate nor did the Department offer an applicable permit for Motor Carrier to purchase prior to the traffic stop. Therefore, Motor Carrier has met the burden of proving the proposed assessment wrong, as required by IC § 9-20-18-14.5(c).

FINDING

Motor Carrier's protest is sustained.

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